IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

JEFFREY C. SKEENS, as Administrator
of the Estate of Grover Skeens,
CAROLYN D. DAVIS, as Administratrix
of the Estate of Charles T. Davis and
OWEN T. DAVIS, as Administrator
of the Estate of Cory Davis,

Plaintiffs,

v. **Civil Action No. 5:13-20595**
Judge:

ALPHA NATURAL RESOURCES, INC. and
ALPHA APPALACHIA HOLDINGS, INC.,
f/k/a MASSEY ENERGY COMPANY,

Defendants.

COMPLAINT

1. The Plaintiffs, Jeffrey C. Skeens, as Administrator of the Estate of Grover Skeens, Carolyn D. Davis, as Administratrix of the Estate of Charles T. Davis and Owen T. Davis, as Administrator of the Estate of Corey Davis (collectively, "Plaintiffs"), by and through counsel, J. Michael Ranson, Cynthia M. Ranson and Ranson Law Offices; and G. Patrick Jacobs and Jacobs Law Office, state and claim as follows:

2. That this is an action to enforce a federal Non-Prosecution Agreement under which Alpha Natural Resources, Inc. and Alpha Appalachia Holdings, Inc., f/k/a Massey Energy Company (collectively "Defendants") agreed to pay the Plaintiffs and other persons One Million Five Hundred Thousand Dollars ($1,500,000.00) in restitution in order to not be criminally prosecuted for their actions as it relates to the deaths of thirty-nine (39) miners at the Upper Big Branch Mine on April 5, 2010.

3. That this action is brought pursuant to 28 USC § 1332 Diversity of Citizenship in that the parties are citizens of different States and the amount in controversy exceeds the sum or value of $75,000.00.

4. That Jeffrey C. Skeens is son and Administrator of the Estate of Grover Skeens, a miner killed in the Upper Big Branch explosion. Grover Skeens was a resident of West Virginia and Jeffrey C. Skeens as the Administrator of the Estate of Grover Skeens was so qualified in West Virginia.

5. That Carolyn D. Davis is the wife and the Administratrix of the Estate of Charles T. Davis, a miner killed in the Upper Big Branch Explosion. Charles T. Davis was a resident of West Virginia and Carolyn D. Davis as the Administratrix of the Estate of Charles T. Davis was so qualified in West Virginia.

6. That Owen T. Davis is the father and the Administrator of the Estate of Cory Davis, a miner killed in the Upper Big Branch Explosion. Cory Davis was a resident of West Virginia and Owen T. Davis as the Administrator of the Estate of Cory Davis was so qualified in West Virginia.

7. The Plaintiffs bring this complaint on behalf of the estates of other miners who were killed in the Upper Big Branch explosion and who have not received restitution and/or full settlements as agreed to by Defendants in exchange for the United States Government agreeing not to prosecute them or make them responsible for the acts of their agents who have committed crimes arising out of the Upper Big Branch Tragedy (**Exhibit A** attached hereto).

8. Alpha Natural Resources, Inc. is a Virginia corporation authorized to do business in West Virginia and in fact is doing business in West Virginia and specifically the Southern District of West Virginia.

9. Alpha Appalachia Holdings, Inc., formerly known as Massey Energy Company, is a Delaware corporation authorized to do business in West Virginia and is in fact doing business in West Virginia and specifically the Southern District of West Virginia.

10. That the deaths of the plaintiffs' decedents occurred on April 5, 2010 in Boone County, West Virginia.

11. That all of the plaintiffs identified herein settled wrongful death cases with Massey Energy on or before April 4, 2011. The settlement of those claims was specifically limited to any potential Wrongful Death Claim.

12. That the Wrongful Death Settlements entered into between the above estates and Massey Energy are confidential and were placed under seal by the Courts having jurisdiction of said settlements.

13. That on June 1, 2011 the defendant Alpha Appalachia Holdings, Inc. signed an agreement to purchase Massey Energy.

14. That prior to June 1, 2011, Defendant Alpha Natural Resources took the position that the Defendant Alpha Natural Resources and Massey were direct competitors in the coal mining industry and remained competitors until June 1, 2011, the date that the Defendant Alpha Natural Resources acquired Massey (see Affidavit of Frank J. Wood, Executive Vice President, Chief Financial Officer, Treasurer, and Assistant Secretary of Defendant Alpha Natural Resources, Inc. attached as **Exhibit B**).

15. That prior to June 1, 2011 the Defendant, Alpha Appalachia Holdings, Inc. and the Defendant Alpha Natural Resources took the position that Alpha did not have any ownership interest in, hold the mining permits to, exercise any control over, or have any economic interest in mining operations belonging to and/or conducted by any Massey entity (see Affidavit of Frank J. Wood, Executive Vice President, Chief Financial Officer, Treasurer, and Assistant Secretary of Defendant Alpha Natural Resources, Inc. attached as **Exhibit B**).

16. That Defendant Alpha Natural Resources took the position that the acquisition of Massey Energy Company on June 1, 2011, did not cause it to assume liabilities of those entities transferred, merged into or blended with those of any other entity, or otherwise changed (see Affidavit of Frank J. Wood, Executive Vice President, Chief Financial Officer, Treasurer, and Assistant Secretary of Defendant Alpha Natural Resources, Inc. attached as **Exhibit B**).

17. That prior to June 1, 2011 Defendant Alpha Natural Resources took the position that it was not "in any way" connected to the events and/or the mining operations related to Massey Energy Company (see Affidavit of Frank J. Wood, Executive Vice President, Chief Financial Officer, Treasurer, and Assistant Secretary of Defendant Alpha Natural Resources, Inc. attached as **Exhibit B**).

18. That on December 6, 2011 the Defendant Alpha Natural Resources, Inc. entered into a Non-Prosecution Agreement in the Southern District of West Virginia, in which said corporation agreed to pay or cause the Defendant Appalachia Holdings, Inc. to pay One Million Five Hundred Thousand Dollars ($1,500,000.00) in restitution to each of the "families" of the miners killed at Upper Big Branch.

19. That the Defendant Alpha Natural Resources has not paid or caused to be paid One Million Five Hundred Thousand Dollars ($1,500,000.00) in restitution to eleven of the families of the Fallen Miners.

20. Those Plaintiffs respectfully request that this Court certify the estates listed on *Appendix C* of the Non-Prosecution Agreement as a class, pursuant to *Rule 23 of the Federal Rules of Civil Procedure* so that the eleven families who have not received restitution may receive the same.

21. That when the Upper Big Branch mine exploded on April 5, 2010, a sonic blast carrying shock waves, debris, projectiles and poisonous gases, among other items, shot down the mine shafts and out various portals.

22. That the effects of the explosion in the immediate area caused death to many miners, including without limitation, Grover Skeens, Charles T. Davis and Cory Davis.

23. That unbeknownst to the Plaintiffs, a Non-Prosecution Agreement was entered into on December 4, 2011 between Defendants and the United States Attorney's Office for the Southern District of West Virginia ("USAO") and the United States Department of Justice ("USDOJ").

24. That as part of said Non-Prosecution Agreement, Defendants agreed to the following:

> As **restitution** for the victims injured in the UBB explosion, Alpha agrees to pay, or to cause Massey or its affiliates to pay, at least $1,500,000 to each of the **families** of the fallen miners and to two individuals affected by the UBB explosion.

(*emphasis added*).

25. That in the Non-Prosecution Agreement the Defendant Alpha Natural Resources is identified as “Alpha” and the Defendant Appalachia Holdings, Inc. is identified as “Massey”.

26. **Appendix C** of the Non-Prosecution Agreement states that “$16,500,000.00 was previously **or anticipated to be paid** as part of settlements with the families of eleven of the fallen miners in the actions.” (*emphasis added*).

27. That prior to December 4, 2011, the Administrators of eleven of the fallen miners settled Wrongful Death Claims with entities known herein as the settling parties.

28. The settling parties did not include the Defendant Alpha Natural Resources.

29. That any monies paid for wrongful death settlements was not paid to “families” but instead is paid to those individuals having claims under the West Virginia Wrongful Death statute.

30. That at no time prior to the signing of said Non-Prosecution Agreement were Plaintiffs “families” paid any restitution as part of any settlement of their claims as victims of any potential criminal acts that occurred on April 5, 2010, nor have they been paid since that date.

31. That Plaintiffs and those listed on Appendix C of the Non-Prosecution Agreement did settle their respective civil wrongful death suits with other parties for a Sum *X* and Terms *Y*.[1]

32. That specific Y terms were executed by Plaintiffs and the families listed on Appendix C, and Term Y will set forth what claims Sum X resolved all of which were limited to solely the potential wrongful death cause of action.

33. That as a matter of law, the settlements for which Sum X was paid and received were solely civil wrongful death claim proceeds, and all of these settlements were approved by various circuit courts in West Virginia as such.

34. That as part of the approval process, West Virginia law requires that testimony and/or evidence be given and representations be made to the Court regarding the terms of the settlement and the amounts of the settlement.

35. That the transcript of those hearings, if released by the Court, will verify the basis upon which Sum X was paid to those listed on Appendix C.

36. That at no time prior to resolving their respective cases with the Defendants was an amount for restitution as it relates to any criminal cause of action was ever disclosed and/or discussed with Plaintiffs, Guardian at Litems or the respective Courts.

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[1] The amount of settlement is under a confidentiality agreement. In fact, the Defendants are in breach of that agreement. Upon an Order from this Court the amounts and terms can be disclosed, as well as those terms set forth in the settlement documents. The Plaintiffs ask this Court to examine those documents regarding the restitution issue.

37. That when the Plaintiffs signed settlement agreements with prior parties a key element was that the settlements would remain confidential and not be disclosed and that the settlement amounts would remain under the seal of the Court.

38. That the Non-Prosecution Agreement is a public document and was released by the Defendants for public review.

39. That prior to the defendants entering into the Non-Prosecution Agreement they had not paid any monies to the Fallen Eleven nor had any monies been paid to the Fallen Eleven on their behalf.

40. That, in effect, the Defendants, as part of the Non-Prosecution agreement, were informing the public at large that Defendant Alpha Natural Resources was going to pay $46,500,000.00 in restitution to the families of the 29 fallen miners and 2 injured miners in exchange for an agreement that Defendant Alpha Natural Resources and Defendant Appalachia Holdings, Inc. would not be prosecuted.

41. That the restitution that the Defendants agreed to pay was a voluntary act on behalf of the Defendants in that it was not an amount set by the Court pursuant to any sentencing or plea agreement.

42. That as it relates to the eleven fallen miners listed on Appendix C the public agreement states as follows;

> “$16,500,000 was previously or **anticipated to be paid** as part of settlements with the families of eleven of the fallen miners in the actions in Appendix C”

43. That anticipated to be paid certainly would mean money to be paid in the future.

44. That the $16,500,000.00 cannot be referring to monies paid to estates as wrongful death money, because any monies paid to estates would be under strict confidential agreements and certainly could not be placed in a public document or used by the Defendants as justification for publically not being prosecuted.

45. That the $16,500,000.00, as it relates to the 11 “families,” has to be just what the document says, i.e. payments anticipated to be paid to the “families” as part of settlements in which the Defendants will not be prosecuted as set forth in the Non-Prosecution Agreement.

46. That an agreement to make voluntary restitution payments to families to avoid criminal prosecution is not the same as payments pursuant to a wrongful death claim in which monies may be paid to non-family members.

47. As further proof, Plaintiffs state that one group of fallen family members were paid the publically announced $1,500,000.00 in excess of whatever monies were paid to resolve wrongful death claims while a second group, including the plaintiffs has not received said restitution payment.

48. As further proof, Plaintiffs state that they believe that two of the eleven family members may have received $1,500,000.00 in excess of whatever monies were paid to resolve wrongful death claims.

49. That nowhere in the Non-Prosecution Agreement does it state that because the Defendants had settled Wrongful Death Claims with those listed in Appendix C that no additional restitution would be paid as it relates to those listed in Appendix C.

50. That the estates of the fallen miners named in the Non-Prosecution Agreement in Appendix D were all paid Five Hundred Thousand Dollars ($500,000.00) in voluntary restitution shortly after the signing of the Non-Prosecution Agreement, and they were apparently paid an additional One Million Dollars ($1,000,000.00) in restitution under the Non-Prosecution Agreement.

51. That the Five Hundred Thousand Dollars ($500,000.00) in voluntary restitution which was paid to Appendix D recipients **was not** paid as part of a civil wrongful death settlement but was paid to the estates of the deceased miners to be distributed to the families as set forth in the Non-Prosecution Agreement.

52. Further as it relates to those on Appendix D the Non-Prosecution Agreement states that $1,000,000 **will be payable** at the time of the resolution of pending civil claims through settlement, judgment, or otherwise, and as part of such civil

resolution to the extent the civil resolution results in a monetary recovery.

53. The agreement does not state that the voluntary restitution will not be paid if the wrongful death cases are resolved for an amount equal to or greater than $1,000,000.00. Instead it clearly states that the voluntary restitution **will be payable** and sets forth **the time** as to when the payment is due.

54. That it is clear that the intent of the Non-Prosecution Agreement was to publically announce the Defendants were going to voluntarily pay $46,500,000.00 in restitution in order to avoid criminal restitution.

55. The agreement does not state that the Defendants are going to pay $46,500,000.00 in wrongful death settlements in order at avoid criminal restitution.

56. That it is believed that nine of the eleven families listed on Appendix C have not been paid any voluntary restitution and potentially all eleven families.

57. That it is clear from the agreement that Defendants intended to use, and have in fact used, monies from a settlement with the individuals named in the Non-Prosecution Agreement, to which they were not a part, as “restitution” money, even though such a representation was never made to these Plaintiffs, or to anyone on Appendix C. Further the Non-Prosecution Agreement does not state

that “wrongful death monies” that were previously paid will be used in any way as consideration for the Non-Prosecution Agreement.

58. That it is believed that any settlements of wrongful death claims made after June 1, 2011 specially name the Defendants as those parties being released.

59. Further it is believed that any settlements of wrongful death claims that were paid out after June 1, 2011 included references to the restitution that the Defendants agreed to pay to the families of the Fallen Miners.

60. That Defendants made false public announcement that restitution was paid, or would be paid when, in fact, no such payments have been paid to Plaintiffs.

COUNT I

ENFORCMENT OF CONTRACUAL OBLIGATION

(STATE CONTRACT ACTION)

61. That the preceding paragraphs are realleged as if restated herein.

62. That this Count is brought pursuant to diversity as set forth herein.

63. That the Plaintiffs, as potential victims of federal criminal violations, have the right to various protections as described and cited herein.

64. That while Plaintiffs did resolve their civil wrongful death cases on behalf of those listed in the West Virginia wrongful death statute at no time did they agree nor was it proposed, that said settlement would cause the families to lose their rights to have those responsible for the death to be prosecuted for said crimes or criminal activities.

65. That clearly the Defendants or their agents were viewed as being potential targets of criminal prosecution and the Defendants were concerned about the same which caused them to enter into the Non-Prosecution Agreement.

66. That the civil settlements did not absolve the Defendants of criminal liability.

67. That the Department of Justice was not involved in any civil settlements.

68. That in getting the Department of Justice to enter into the Non-Prosecution Agreement, Defendants promised to pay $1,500,000.00 to each of the fallen miners families in consideration for them giving up their rights to have Defendants prosecuted or to have the Defendants be responsible for the Criminal Acts of its agents.

69. That this payment was a voluntary payment of restitution in which the amount was agreed to by the Defendants in order to obtain a Non-Prosecution Agreement.

70. That the Defendants did not seek Court approval to have any restitution they agreed to pay to also be offset by the payment of civil settlements.

71. That the intent of the Non-Prosecution Agreement was to have all of the fallen miners to be treated the same as it relates to the payment of said restitution.

72. That eighteen of the families of fallen miners have received the $1,500,000.00 of restitution in excess of any civil settlement.

73. That the Defendants should be required to pay the restitution that they agreed to pay pursuant to the Non-Prosecution Agreement.

COUNT II

ENFORCEMENT OF SETTLEMENT AGREEMENTS

74. That the preceding paragraphs are realleged as if restated herein.

75. That jurisdiction for this claim is diversity as set forth herein.

76. That Plaintiffs did not sign, and were not required to sign, a release that would allow for the defendants to escape criminal prosecution in exchange for paying restitution to the Plaintiffs.

77. That if it is Defendants' representation that One Million Five Hundred Thousand Dollars ($1,500,000.00) of Sum X was paid for restitution and not part of the

payment for the settlement of the civil wrongful death claim, then the settlement amount agreed upon to settle the wrongful death claim is now due and owing to each of the Plaintiffs in the amount of One Million Five Hundred Thousand Dollars ($1,500,000.00).

78. That Defendants should be required the pay the full sums due and owning as Sum X, as agreed by the parties and as approved by the circuit courts of West Virginia.

COUNT III

FAILURE TO PAY FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) TO THE ESTATES

79. That the preceding paragraphs are realleged as if restated herein.

80. That this Count is brought pursuant to diversity as set forth herein.

81. That in the event the Court would find as a matter of law that the previous settlements should be designated as payment of restitution then only One Million Dollars ($1,000,000.00) of settlement monies should be considered as part of said restitution.

82. That Five Hundred Thousand Dollars ($500,000.00) of criminal restitution was paid to the Estates of Appendix D and the same amount should be paid to Estates set forth in Appendix C.

COUNT IV

CIVIL CONSPIRACY

83. That the preceding paragraphs are realleged as if restated herein.

84. That this Count is brought pursuant to diversity as set forth herein.

85. That the plaintiffs' settled their wrongful death cases with Performance Coal Company, Massey Energy Company, A.T. Massey Coal Company, Inc. and Massey Coal Services, Inc. (settling parties) prior to June 1, 2011.

86. That prior to June 1, 2011 the defendants to this cause of action, Defendant Alpha Natural Resources and Defendant Appalachia Holdings, Inc. were not a part of Performance Coal Company, Massey Energy Company, A.T. Massey Coal Company, Inc. or Massey Coal or Services, Inc.

87. That based upon prior filings of the defendants, the defendants were meeting with the parties listed in paragraph 85 for the purpose of reaching an agreement that any settlements paid by the "settling parties" would include any future restitution that the defendants may agree to pay to the Fallen Eleven all without the knowledge of the Fallen Eleven.

88. That as a result of said conspiracy the Defendants are refusing to pay to the Fallen Eleven the amount of restitution that they have agreed to pay in the Non-Prosecution Agreement.

89. That as a result of said conspiracy the Fallen Eleven have been damaged in the amount of $1,500,000.00 per family.

COUNT V

BREACH OF CONFIDENTIALTY

(STATE CLAIM)

90. That the preceding paragraphs are realleged as if restated herein.

91. That this Count is brought pursuant to diversity as set forth herein.

92. That the Plaintiffs entered into a confidential settlement with settling parties and that said settlement amounts are under Court Seal.

93. That the settlements have been found to be confidential by both State and Federal Courts.

94. That to the extent that the Non-Prosecution Agreement's references to payments made in the amount of $16,500,000.00 was intended to also reference those payments made by settling parties to settle civil claims, and more specifically the claims of Plaintiffs, then, in that event, Defendants have breached the confidentially provisions of said settlement agreements without prior Court approval.

95. That it would appear that the Defendants have breached the confidentiality agreement by disclosing this information to the United States Attorney's office in order to obtain a Non-Prosecution Agreement that was advantageous to their own position of avoiding criminal prosecution.

96. That Defendants further published said confidential information in order to appear as if they were taking steps to assist the families of the fallen miners.

97. That by disclosing this confidential information they have caused great harm to the Plaintiffs to the extent that said information was used to keep the Plaintiffs from obtaining the restitution that was paid to the families of fallen miners who had not signed confidential agreements.

98. That as a result of said violation by disclosing any settlement information to the United States Attorney and the public at large the Fallen Eleven have been damaged in the amount of $1,500,000.00 per family.

WHEREFORE, Plaintiffs, as victims of the Upper Big Branch Mine explosion, seek the following relief:

a. That the Court recognize those on Appendix C as a Class;

b. That the Court order Defendants to pay One Million Five Hundred Thousand Dollars ($1,500,000.00) to each Petitioner as restitution as agreed to by the Defendants in the Non-Prosecution Agreement;

c. That, if any of the previous settlements monies paid to these Plaintiffs is designated and/or defined as restitution, the Court order the full amount of the civil wrongful death settlements be paid to Plaintiffs, forthwith;

d. That, if the Court allows prior civil wrongful death settlements to satisfy the voluntary restitution payments, that the Court order Defendants to pay the remaining Five Hundred Thousand Dollars ($500,000.00) of restitution owed to the estates of those miners listed on Appendix C;

e. That they be awarded damages in an amount at least equal to the restitution that was to be paid for the willful violation of the confidential settlement agreement.

f. Punitive damages for any fraud and civil conspiracy that was committed by the defendants herein.

g. That Defendants pay all costs and attorney fees associated with this action;

h. Any other relief that the Court believes is just and equitable.

JEFFREY C. SKEENS, as Administrator
of the Estate of Grover Skeens,
CAROLYN D. DAVIS, as Administratrix
of the Estate of Charles T. Davis and
OWEN T. DAVIS, as Administrator
of the Estate of Cory Davis,
By Counsel

s/ J. Michael Ranson

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